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2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION
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6 IN RE APPLIED SIGNAL TECHNOLOGY,
7 INC. SECURITIES LITIGATION
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MASTER FILE NO. C 05-01027 SBA

CLASS ACTION

ORDER

[Docket 108]

11
12 Presently before the Court is the pro se Motion to Intervene as Plaintiffs and for Recusal
13 of Counsel David Allen Priebe, filed by Patrick J. Simpson, Richard Galietti, Isong Akpan,
14 Andre Cowley, Riches Jonathan Lee, Mario Alvarado, George Barbour, Maurice Shelly, Eddie
15 Whitlow, and Justin Laube (the “Proposed Intervenors”).

16 This is a securities fraud case brought in 2005 on behalf of a class of all purchasers of
17 Applied Signal common stock. The Court approved a final settlement of the litigation by
18 Order dated August 3, 2009. On August 3, 2009, the Court also entered Final Judgment of
19 Dismissal with Prejudice. Lead Plaintiff filed a Motion for Distribution on May 21, 2010.
20 This Court notes that, with the exception of Mr. Lee, none of the Proposed Intervenors had any
21 involvement in this litigation prior to this point. Mr. Lee filed an earlier Motion to Intervene
22 that was denied by this Court on July 17, 2009. (Docket No. 95.) Lead Plaintiff Frank Whiting
23 has filed an opposition to the instant motion.

24 In their motion, the Proposed Intervenors claim either intervention as of right under
25 Federal Rule of Civil Procedure 24(a) or permissive intervention under Rule 24(b). Their only
26 asserted basis for attempted intervention is the claim that “movants have a common vested
27 interest in this litigation and support the claims of Plaintiff Benson.” The Proposed Intervenors
28 do not claim to be members of the class. In addition, the Proposed Intervenors seek “recusal”

1 of Defendants' counsel David Allen Priebe "due to financial and personal conflicts of interest
2 that will prevent the movants from receiving a fair hearing." They also contend that "Counsel
3 Priebe and DLA Piper defended Movant Patrick J. Simpson in his Federal Criminal Case,
4 District of Maine," and "Simpson claims ineffective assistance of counsel"

5 **I. DISCUSSION**

6 In those situations not covered by an unconditional statutory right to intervene under
7 Rule 24(a)(1), Rule 24(a)(2) sets forth a four-part test for intervention as of right. The
8 intervenor must show that: (1) the intervention application is timely; (2) the applicant has a
9 "significant protectable interest relating to the property or transaction that is the subject of the
10 action"; (3) "the disposition of the action may, as a practical matter, impair or impede the
11 applicant's ability to protect its interest"; and (4) "the existing parties may not adequately
12 represent the applicant's interest." Fed. R. Civ. Pro. 24(a)(2). Although the party seeking to
13 intervene bears the burden of showing those four elements are met, "the requirements for
14 intervention are broadly interpreted in favor of intervention." Prete v. Bradbury, 438 F.3d 949,
15 954 (9th Cir. 2006); see also Donnelly v. Glickman, 159 F.3d 405, 409 (9th Cir. 1998).

16 With respect to permissive intervention under Rule 24(b), the Court may grant a timely
17 motion to intervene if it is brought by one who is (1) given a conditional right to intervene by a
18 federal statute; or (2) has a claim or defense that shares with the main action a common
19 question of law or fact. The proposed intervenor bears the burden to demonstrate that it has
20 satisfied the requirements for intervention. Prete, 438 F.3d at 954.

21 Here, the Proposed Intervenors have not shown that they have a "significant protectable
22 interest relating to the property or transaction that is the subject of the action." From their
23 motion, it is wholly unclear what their "vested interest" in the subject matter of the litigation
24 could be. They do not claim any statutory right to intervene, they do not claim that they have
25 an interest relating to the property or transaction in question, they do not state how disposal of
26 the matter could "impair or impede" their ability to protect their interests, nor do they set out
27 any common questions of law and fact between the issues involved in this litigation (securities
28 fraud allegations against Defendant Applied Signal) and the issues about which they complain

1 (movant Patrick J. Simpson's unrelated criminal trial). The only connection to this litigation
2 set out in their papers appears to be a claim that Mr. Simpson was represented at one time by
3 counsel for Defendants; however, that has no bearing on the merits of the litigation before this
4 Court.

5 For these reasons, the Proposed Intervenor have not met their burden to show that they
6 are entitled to intervene under either Rule 24(a) or 26(b).

7 As a final matter, the Proposed Intervenor seek "recusal" of Defendants' counsel so
8 that they may receive a "fair hearing." As indicated, the Proposed Intervenor's motion to
9 intervene fails on its merits. Therefore, their motion for recusal of Defendants' counsel is
10 moot.

11 **II. CONCLUSION**

12 For the above stated reasons, the Proposed Intervenor's Motion to Intervene as Plaintiffs
13 and for Recusal of Counsel is DENIED in its entirety. This order terminates Docket No. 108.

14 IT IS SO ORDERED.

15 Dated: September 16, 2010


16 SAUNDRA BROWN ARMSTRONG
17 United States District Judge
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